



Jeremiah W. (Jay) Nixon, Governor

Sara Parker Pauley, Director

## DEPARTMENT OF NATURAL RESOURCES

[dnr.mo.gov](http://dnr.mo.gov)

File: Heartland Materials, L.L.C., New Permit (Pending), Permit #1072, Public Comments

January 7, 2011

To All Petitioners

Dear Petitioners,

Thank you for your letter requesting a public meeting or a formal hearing involving the proposed new permit application regarding Heartland Materials, L.L.C., Heartland Quarry Site in Cape Girardeau County. Heartland Materials respectfully declined to hold a public meeting.

Therefore, we are placing your request for a formal hearing on the January 27, 2011 agenda for the Missouri Land Reclamation Commission to consider. The Land Reclamation Commission at their meeting on Thursday January 27, 2011 at 10:00 a.m. will discuss the matter of the formal hearing request. The location will be at the Missouri Department of Natural Resources, Elm Street Office Complex, Bennett Spring and Roaring River Conference rooms, 1730 East Elm, Lower Level, Jefferson City, Missouri. A Web link to a map illustrating the location of this meeting is: <http://dnr.mo.gov/shared/elmstreet.htm>.

Upon arrival at the entrance please check in with the receptionist for directions to the meeting room. Please be advised that because of the number of people expected, parking at this location may be limited. There is a large parking area located behind the office buildings however, these spaces are utilized daily by employees of the Department. Therefore, please arrive early and, if at all possible, consider carpooling in order to maximize the use of available parking spaces.

The purpose of this agenda item before the Land Reclamation Commission will be to provide the Commission with basic information to make an informed decision about whether or not you have standing to be granted a hearing. Before a hearing can be granted, the person who has submitted the hearing request must demonstrate to the Land Reclamation Commission that there is a basis for a hearing. Please be prepared at that time to explain to the Commission why you feel your health, safety or livelihood will be unduly impaired by the issuance of the permit. If you are unable to attend the January 27, 2011 meeting, the Commission will consider your written request. They will then decide if you have the proper "standing", which is the criteria used to determine if a hearing should be held.



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The decision as to whether or not a formal hearing will be granted rests solely with the Land Reclamation Commission and will be decided at the scheduled January 27, 2011, meeting. The hearing will not be held on January 27, 2011.

To better understand the process, allow me to explain exactly what is meant by the term “hearing” under the law. This is not an informal or formal meeting that takes place to discuss the merits or drawbacks of the issuance of a particular permit to a mining company. Rather, it is a formal judicial proceeding that occurs before a hearing officer, who functions like a judge, in which all parties are generally represented by legal counsel. If a hearing is granted, the hearing will delay the issuance of the permit until the matter is heard by the hearing officer. It should be understood that if a hearing is granted, you must submit scientific evidence to support your claim in that hearing. The hearing officer then issues a recommendation to the Land Reclamation Commission for issuance or denial of the permit and the final decision then rests with the Commission.

I have discussed the criteria for determining standing above. It is defined in the regulations of the state of Missouri and may be found at 10 CSR 40-10.080 (2), which support “The Land Reclamation Act.” This Act contains the governing laws by which this agency and the industry, which it regulates, must abide.

I have prepared a recommendation concerning permit issuance or denial that is required by *The Land Reclamation Act* at 444.773.1 RSMo. Please find the recommendation and associated Attachment following this letter.

A link to “The Land Reclamation Act” is: <http://dnr.mo.gov/assistance/laws-regulations.htm>

The recommendation only advises the Land Reclamation Commission that the applicant has met all the technical requirements of *The Land Reclamation Act* in order to qualify for a permit, and that submitted comments have been considered. Please note that this recommendation is just the first step in the process of deciding whether to issue or deny the permit. While this recommendation will provide program staff responses of written comments as required by the “Act”, only the Land Reclamation Commission can act on your concerns. Their decision will be based mainly on what they hear from you at the January 27, 2011 meeting of the Commission, which is the second step in the process of deciding whether to issue or deny the permit. If a hearing is ordered after the Commission hears your concerns, that hearing will be held at some later date. Please note that you can also access the agenda and other documents included for this meeting by accessing the following web sites:

<http://www.dnr.mo.gov/env/lrp/commission/lrc.htm> and <http://dnr.mo.gov/env/fruitland.htm>

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If you have any questions concerning this matter you may call me at (573) 751-4041. Thank you very much for your interest in this matter and we look forward to your participation in the future.

Sincerely,

LAND RECLAMATION COMMISSION

*Original Signed by Mike Larsen*

Mike Larsen, R.G.  
Staff Director

ML:ct:ts



Jeremiah W. (Jay) Nixon, Governor

Sara Parker Pauley, Director

## DEPARTMENT OF NATURAL RESOURCES

[dnr.mo.gov](http://dnr.mo.gov)

### MEMORANDUM

DATE: January 5, 2011

TO: Land Reclamation Commission

FROM: Mike Larsen, Staff Director *Original Signed By Mike Larsen*  
Land Reclamation Program

SUBJECT: Director's Recommendation – Heartland Materials, L.L.C., New Permit  
Application, Heartland Quarry - 161 acres; Cape Girardeau County.

The following constitutes the Director's Recommendation based on a review of application completeness, consideration of written comments received and the required components of the recommendation.

#### **Staff Director's Notice of Recommendation**

The Land Reclamation Act at Section 444.773.3, RSMo, requires that the Staff Director make a formal recommendation to the commission regarding the issuance or denial of an applicant's permit. In addition, the "Act" at 444.773.1, RSMo, requires the Director to consider any written comments when making the notice of recommendation. After consideration of application completeness, it is my recommendation to the commission to issue the new permit for 161 acres at the Heartland Quarry Site in Cape Girardeau County sought after by Heartland Materials, L.L.C.

As the commissioners will understand in the attachment to this recommendation, there have been many issues raised. There are issues regarding the mining and operational plans of Heartland Materials, LLC which are related to concerns about potential future impacts. Such future impacts cannot be measured today and some issues are of such complexity that no one person possesses the technical expertise to make a complete and thorough evaluation of the potential for such future impacts.

As Staff Director I have recommended approval of the pending mining permit application because the company has satisfied all of the application requirements of the "Land Reclamation Act". However, I would point out to the commission that this application has received the greatest amount of public input ever received by the program for a mining permit application.



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After considering all of the written comments received I have come to the conclusion that this is, without question, an issue of extensive and extreme concern to thousands of citizens in the area of this proposed mining operation. Also, please note that "The Land Reclamation Act" at 444.762 RSMO states: "It is hereby declared to be the policy of this state to strike a balance between surface mining of minerals and reclamation of land .... (and) .... to protect and promote the health, safety and general welfare of the people of this state."

My recommendation for approving this new permit application is based on the fact that the applicant has satisfied the requirements for application completeness as required by both law and regulation. Furthermore, comments received by the program have been considered and responded to in Attachment 1 to this recommendation which is being provided to the commission for their review.

The issue of whether or not to grant a formal hearing as requested by many petitioners opposed to this permit and the ultimate decision concerning permit issuance now rests with the Land Reclamation Commission.

### **Required Components of the Recommendation**

The Land Reclamation Act requires that the director make a formal recommendation regarding the issuance or denial of an applicant's permit. Rules at 10CSR 40-10.040(2)(A) require that the Director's recommendation be based on several specific items as follows:

1. The application's compliance with section 444.772, RSMo (The Law);
2. The application's compliance with 10 CSR 40-10.020 (The Regulations);
3. Consideration of any written comments received;
4. Whether the operator has had a permit revoked or a bond forfeited; and
5. If a petition is filed and a hearing is held, the commission shall make the decision on permit issuance or denial.

**Items 1 and 2:** These are basically the same issue stating that the application must meet the criteria for application completeness in both the statutes and the rules. After staff review of the new permit application from Heartland Materials, L.L.C., the staff determines that the application document has met the standards of both the statutes and the rules.

**Item 3:** For consideration of all written comments received, please refer to Attachment 1.

**Item 4:** The applicant has never had a permit revoked or a bond forfeited, in accordance with the full language of the rules at 10CSR 40-10.040(2)(A)4.

**Item 5:** There is record on file that approximately 575 persons are requesting that a hearing be held concerning the new permit application sought after by Heartland Materials, L.L.C. Many

people also requested a public meeting and Heartland Materials, L.L.C. respectively declined to hold a public meeting.

### **Summary Comments**

As the commissioners will understand in the following pages (Attachment 1), there are a variety of concerns surrounding this proposed new permit application. The Land Reclamation Act addresses the issues of a request for a public meeting and requests for a hearing. The Missouri Department of Natural Resources does provide protection concerning issues of water and air pollution. The Department does not have any jurisdiction to address concerns related to blasting, mining in a developed residential area where local planning and zoning does not exist, property values, vehicular traffic or noise pollution concerns.

Acting on a mining permit in which petitioners object to the permit requires two separate actions. First, the law requires that the director provide a recommendation to the commission concerning the issuance of a permit. When making the recommendation the director must do two things: 1. Evaluate the application for technical adequacy and completeness and, 2. Consider all written comments received during the public comment period.

As stated in the first paragraph of this recommendation the application has been deemed adequate and complete by the program's staff. Written consideration to comments received during the public notice period is being provided to the commission as an attachment to this recommendation for the commission's review.

As Staff Director I have recommended approval of the pending new permit application, because, in fact, the applicant has satisfied all of the technical permit application requirements of "The Land Reclamation Act" and consideration has been given to all written comments received. This completes the first step of a two step process.

The Land Reclamation Commission must now decide if the evidentiary hearing requested by the petitioners opposed to the issuance of the permit is warranted. In this case, issues of concern received by petitioners opposing the permit did receive a written response to the concerns expressed in the Attachment to this memorandum, to the extent the program staff were able to respond.

All petitioners for a hearing have been advised, to the best of the program's ability to do so, of this recommendation along with information from the program explaining how to prepare for the Land Reclamation Commission meeting. At this meeting the petitioners will have the opportunity to convince the commission, through the submission of good faith evidence, that they do, in fact, have standing as defined by the regulations in order for the commission to grant a hearing. The regulations which define standing are found at 10 CSR 40-10.080(2) and read as follows:

10 CSR 40-10.080 (2) - Establishing Standing for a Formal Public Hearing.

(A) For a formal public hearing to be granted by the Land Reclamation Commission, the petitioner must first establish standing.

(B) The petitioner is said to have standing to be granted a formal public hearing if the petitioner provides good faith evidence of how their health, safety, or livelihood will be unduly impaired by the issuance of the permit. The impact to the petitioner's health, safety, and livelihood must be within the authority of any environmental law or regulation administered by the Missouri Department of Natural Resources.

Only the Land Reclamation Commission can now decide on the hearing request and on whether or not the permit should be issued.

ML:ct:ts

Attachment

## **Attachment 1**

### **Consideration of and Response to Public Comments Received Regarding the Proposed New Permit Application for Heartland Materials L.L.C., Cape Girardeau County, Missouri**

The Staff Director of the Missouri Department of Natural Resources, Land Reclamation Program received letters, emails and two petitions providing comments, requesting a public meeting and requesting a public hearing concerning the proposed new permit application of the Heartland Quarry site sought after by Heartland Materials, L.L.C. The full tally of signatures of persons opposed to the issuance of the permit was approximately 2,600. The names of people who requested a hearing are listed under the heading of Hearing Request.

All correspondence received by the program during the public notice period for this application has been posted on the Department's web site at <http://dnr.mo.gov/env/fruitland.htm> for all interested parties as well as the Missouri Land Reclamation Commission's information and review. The commission has been advised and informed of these letters, how and where to find them and have been periodically visiting the Department's web site specifically for the purpose of reading all letters posted.

These individual comments and concerns have been grouped together for efficiency of written response and for clarity of presentation to the commission in summary form. Listed below are the issues raised in the approximately 2,600 letters, emails and petition signatures received during the public comment period and the staff's responses in consideration of comments or concerns received.

#### **Comments Received Concerning the Application Contents**

**Summary of Concerns:** In a letter received from legal counsel for Saxony Lutheran High School and Save Our Children's Health, Inc., several comments were made regarding the mining permit application itself. The comments are reiterated below along with responses to those comments.

**“Heartland Materials, LLC does not have sufficient legal authority to mine the land in the proposed permitted area.”**

**Response:** In the initial application Heartland Materials, LLC provided to us that a verbal agreement had been reached with the landowners as their “source of right to mine”. This was actually an agreement to enter into a long term lease pending the acquisition of all necessary permits. This aspect of the mining permit application has since been amended. Now, the company has provided written proof to the program that a signed, long term lease has been fully executed with the landowners. This satisfies the requirement found at 444.772.2(2) of the “Land Reclamation Act” which requires the applicant to provide a “source of the applicant's legal right to mine the land affected by the permit.”



**“Because the application fails to address any permits issued to the landowners, who may be considered silent partners, the application is deficient.”**

**Response:** Section 444.772.2(4) of the “Land Reclamation Act” requires the applicant and any person associated with the applicant to provide a listing of mining permits held or formerly held under the provisions of this “Act”. Heartland Materials has, in fact, provided a listing of company partners and officials who make up and are associated with this company. All mining permits, past and present, that are or have been held by these persons under the provisions of the “Land Reclamation Act” are listed in the company’s permit application. Landowners of areas proposed to be mined are not considered to be “persons associated with the applicant” in this instance nor have they ever been unless they are, in fact, corporate members, officers or partners in some way affiliated with the applicant. In any event, the program did research our database in an effort to determine if any of the property owners ever held a mining permit. The results confirm that none have.

**“The potential to expand the Heartland proposed mine plan to both the east and the west of Saxony Lutheran High School and reach all the way to the Strack proposed mine plan is an additional basis for reviewing the Strack and Heartland applications in tandem and assessing the effects of the proposed permitted activities on Saxony students, faculty and staff comprehensively and in tandem.”**

**Response:** This concern is completely understandable however, the decision as to whether or not both applications should be considered “in tandem” or as separate, stand alone applications is a decision that only the Land Reclamation Commission can make. Throughout the statutes that comprise the “Land Reclamation Act”, reference is made in many places to the singular form of the word “application.” Therefore, each application should be considered on its own merits and not in combination with another, although geographically related, each application is from an entirely different and separate applicant.

**“Based on the application materials, and despite the reclamation plan, the proposed bonding will not match the level of financial assurance required to reclaim the land.”**

**Response:** As specified by section 444.778.1 of “The Land Reclamation Act”, bonding of any permitted area under this law is set by statute at “...the penal sum of eight thousand dollars for each permit up to eight acres and five hundred dollars for each acre thereafter that is to be mined.” This is the requirement of current law. The program and/or the commission have no authority to require additional bonding at the time of initial permit application submittal.

### **Air Pollution/Dust Control**

**Summary of Concerns:** In the letters received, there were many concerns about how the dust created by the quarry would negatively impact the area and especially the health of the students attending Saxony Lutheran High School.

**Response:** The generation of dust at limestone mining and processing operations comes from a variety of sources. Some of those sources involve stockpiles, crushing operations, on route traffic, and blasting. Missouri air quality laws do not tolerate visible dust emissions migrating

off the property boundary. Dust must be contained within the property boundary of Heartland Materials operation, if the mining permit is issued. If dust is seen escaping the confines of the property boundary or if there are excessive amounts of dust noticed during normal operation then Heartland Materials will need to take immediate corrective actions. Our contact person for Heartland Materials is Danny Dumey who may be contacted by telephone at (573) 545-3030 or in writing at P.O. Box 558, Benton, Missouri 63736.

If Heartland Materials fails to take corrective actions concerning fugitive dust migrating onto adjacent properties, concerned parties should contact the Department's Southeast Regional Office. If the department finds Heartland Materials is allowing dust to migrate onto adjacent properties, appropriate actions will be taken. To report a dust complaint contact the department's Southeast Regional Office, 2155 North Westwood Blvd., Poplar Bluff, MO 63901 or by telephone at (573) 840-9750. It will prove best to ask to speak with someone in Air Pollution Control. Only the Department's air laws regulate dust generated at a mine site.

### **Asthma**

**Concern:** At the request of a commission member, staff researched how many times the word "asthma" appears in letters received concerning Heartland Materials, L.L.C. On December 16, 2010 a word search was performed on the Optical Character Reading scanned documents. A sample of sentences with the word "asthma" is listed below:

“As it relates to health, my 10year old son has asthma and my research shows that quarry dust is extremely detrimental to children with this condition.”

“Dust from the quarry and trucks may worsen the condition of children and older adults with asthma and other breathing afflictions.”

“One of our daughters is allergic to dust and has asthma.”

“The dust created by the quarry operation may be detrimental to students and faculty, particularly those who suffer from asthma or other respiratory conditions.”

“I am a senior citizen with severe asthma.”

“My wife has severe asthma.”

“The effects upon the health of many of the students in these schools is bound to be great considering so many students these days have asthma as well as other respiratory conditions.”

“What if a child who needed what Saxony has to offer missed his/her chance because he/she was allergic to dust, had asthma, was leery of flying rocks, or was frightened away by the large equipment and noise?”

“My grandsons and their father have asthma and breathing problems already.”

Emergency Room: Residents of Cape Girardeau County						
Diagnosis: Asthma [128.]						
	Year					
	2007		2008		Total for Selection	
Age of Patient	Number of Visits	Rate	Number of Visits	Rate	Number of Visits	Rate
Under 15	65	4.9	54	4.0	119	4.5
15 to 24	32	2.2	28	1.9	60	2.1
25 to 44	45	2.7	49	3.0	94	2.8
45 to 64	17	0.9 @	13	0.7 @	30	0.8
65 and over	8	0.8 @	3	0.3 @	11	0.5 @
<b>All ages</b>	167	<b>2.5</b>	147	<b>2.2</b>	314	<b>2.4</b>
<b>Rates Per 1,000</b> <b>Age Adjustment Uses 2000 Standard Population</b> <b>@ Rate considered unreliable, numerator less than 20</b>						

## **Air Pollution**

**Concern:** “In addition, Cape Girardeau County has been on the margin of being designated an ozone nonattainment county and the increased truck traffic will likely push the county over the ozone limit.”

**Response:** Environmental Protection Agency is currently reviewing and revising the ozone standard. Until a final decision is made on the new standard, the department is unable to speculate on the designation of different areas and the impact truck traffic would have on the designation.

## **Noise Pollution**

**Summary of Concerns:** In the letters, emails and petitions received, there were many concerns about how the noise created by the quarry would negatively impact the area.

**Response:** We understand that Heartland Materials will generate a variety of noises and noise levels when they operate the quarry, if the permit application receives approval. If noise levels generated from the quarry operation become problematic we suggest that citizens voice that concern to Heartland Materials. Our contact person for Heartland Materials is Danny Dumey who may be contacted by telephone at (573) 545-3030 or in writing at P.O. Box 558, Benton, Missouri 63736.

Another option is to contact the Mine Safety and Health Administration (MSHA) at their field office in Rolla by telephone at (573) 364-8282 or in writing at 1400 Independence Road, Suite 100, Rolla, Missouri 65401. Although MSHA only regulates a miner's safety and well being; most likely if people outside of the quarry area are experiencing problems with noise pollution from the mine site, it is possible that mineworkers are too.

There are no environmental provisions that allow the Missouri Department of Natural Resources to administer protection against noise pollution.

## **Traffic**

**Summary of Concerns:** In the letters, emails and petitions received, there were many concerns about how increased traffic from the quarry would negatively impact the area and especially the students attending Saxony Lutheran High School.

**Response:** The Missouri Department of Natural Resources has no authority to regulate traffic on public roads in Missouri. It would be best to contact local authorities about nuisance traffic, damage to roads or safety issues from the mining operation if this permit is granted.

## **Blasting Related Issues**

**Summary of Concerns:** In the letters received, there were many concerns about how the blasting activities at the quarry would negatively impact the area and the learning environment of the Saxony High School students.

**Response:** Detonation of explosives always triggers ground vibrations at specific frequencies that do leave the blast area and resonate structures nearby. Blast vibrations can also be perceptible, but not necessarily damaging, in a home at great distances from a blast.

It may prove beneficial for concerned individuals to have a blasting survey taken of their house and/or other property if they live near a mine site. A blasting survey done before the initiation of a blasting program is of the most value, but a survey can be performed at any time. The blasting survey usually involves an independent party documenting all of the walls and other parts of the house or structure for cracks or the lack of cracks.

Another option to consider is having an independent blasting consultant set up a seismograph to monitor the vibrations a residence or another structure experiences. If the seismograph measures damaging ground movement at a damaging frequency, during the detonation of explosives, then there is better evidence that the damage caused to a residence is, in fact, related to blasting. A review of past blasting records or logs will also provide insights to how explosives have been used.

If a concerned person experiences damage to their property due to the operation of the proposed neighboring quarry then those individuals have every right to take civil litigation actions to formally resolve those issues. Although civil litigation is an option, we recommend that concerned individuals request the company to provide assistance with a blasting survey, seismograph monitoring or any damage claim, although we must emphasize that this would be strictly voluntary for the company. There are no environmental laws that would require the company to do so. Again, our contact person with Heartland Materials is Danny Dumey who may be contacted by telephone at (573) 545-3030 or in writing at P.O. Box 558, Benton, Missouri 63736.

We further suggest that Heartland Materials provide a blasting schedule to each person who lives or works within a half-mile from the point of explosive detonations. The blasting schedule should advise people of the typical times when explosives are detonated. Another precaution for Heartland Materials to consider is making people aware of a detonation with a warning siren, at least one minute prior to the detonation that is audible for a half-mile distance from the point of detonation; although there is no environmental requirement for the company to do so. The Department of Natural Resources does not regulate blasting related activities at limestone quarries in any way as we have no jurisdiction to do so.

Flyrock is the undesirable throw of material from a blast. It is generally found to originate around the collar of the blast hole or the face of a blast and to have been caused by incorrect selection or application of burden, stemming length or by blast holes being initiated out of sequence. Flyrock can also result due to the structure of the rock. Fissures, joints and weakness

planes are not necessarily the same from location to location even within the same blast area. When voids in the rock are present and the bore hole driller does not inform the blaster-in-charge of such voids, the explosives' power vents through a void and is capable of expelling debris for some distance. A good solid rock formation is less likely to produce a chance of fly rock. If by chance, rocks are thrown onto property that neighbors the site, please do not hesitate to contact Heartland Materials to pick up rocks that might be thrown on to neighboring properties as a result of a blast from the mine site; although there is no environmental regulation for Heartland Materials to do so, it is simply a good neighbor policy. Again, our contact person with Heartland Materials is Mr. Danny Dumey who may be contacted by telephone at (573) 545-3030 or in writing at P.O. Box 558, Benton, Missouri 63736.

If flyrock were to cause damage to a neighbor's property it will prove beneficial to document the damage. We again encourage people to inform the company of any possible damage to see if they will take actions to resolve those concerns. We do encourage Heartland Materials to take corrective actions to alleviate the concerns of people if there is damaged property, although there is no environmental law for them to do so. The Mine Safety and Health Administration (MSHA) will also get involved if fly rock off of the mine property occurs.

Another option is to contact the Missouri Limestone Producers Association (MLPA). MLPA is a trade association that exists in part to help mediate problems that can occur among communities or residents and limestone mining operations. A phone number for the MLPA is (573) 635-0208 and we recommend that a concerned person speak with Mr. Steve Rudloff, Executive Director.

The Missouri Blasting Safety Act was enacted in 2007 and regulates various blasting and excavation activities. The act requires individuals who use explosives to have a blaster's license or be supervised by a person with a blaster's license, with some exceptions. The act directed the Division of Fire Safety State Fire Marshall's Office to create a blaster's licensing program and lays out qualifications for license applicants, which include completing an approved blaster's training course and passing a licensing examination. We encourage you to contact the Division of Fire Safety (573) 751-2930 to learn more about this law.

## **Water Quality/Quantity Issues**

**Concerns:** In the letters received there were many concerns raised as to the protection of ground water wells, the impacts to Hubble Creek, livestock watering, obtaining the required "Clean Water Act" permits and a request that a subsurface geologic study be performed.

**Response:** Concerns about water wells becoming contaminated or a drop in the static ground water levels due to a nearby mining operation are understandable. Currently, the Missouri Department of Natural Resources does not regulate private water well issues, but there are steps that can be taken to determine whether or not a private water well is negatively impacted in the future. In order to document that there has been a change in the water quality of a private well there will first need to be a water quality analysis that provides baseline data. A baseline water sample should be from a concerned individual's well. If there is a detected change in the water quality another water quality sample should be taken. The baseline analysis is then used to compare future water analysis to see if there is a change in the water quality. If a future water

sample identifies that there is a negative change from the baseline analysis then there is proof that the concerned individual's well water quality is affected; although this may not necessarily mean that the mining operation caused this change. If anyone elects to have their well water tested, we recommend that they use the services of a qualified individual who will follow accepted methods to sample the water and transport it to a laboratory for analysis. The Missouri Department of Health is responsible for testing water samples from privately owned wells. For assistance to sample a private well, contact the local County Department of Health office. People who use a private well may make a request to Heartland Materials to help with the cost of obtaining a water sample, although we must emphasize that this would be strictly voluntary for the company, there are no environmental laws that would require them to do so.

We have spoken with representatives of the Department's Water Protection Program to further understand what someone can do to protect their supply of water. From those conversations we learned that there are no laws in Missouri that provide protection for maintaining a viable groundwater supply to recharge a well. For more information concerning water wells, contact the department's Public Drinking Water Branch at (573) 751-5331.

Concerned individuals, and Heartland Materials, might be able to reach some type of an agreement for implementing a water quality monitoring plan. We recommend that concerned individuals discuss with the company a plan to complete this work and to pay the cost of a water monitoring plan. However we must emphasize that this would be strictly voluntary for the company. There are no environmental laws that would require the company to do so.

### **Mining and the Environment / Hubble Creek**

**Concerns:** "I am also very concerned as to what the quarry would do to Hubble Creek, since it flowed right through the proposed area where the quarry is set to be built, I am not exactly sure what effect it will have on the animals, fish and birds that use the creek but it cannot be good."

"This entire area is the starting of Hubble Creek. If dust/"fines" are allowed to enter the Hubble Creek at the start, the City of Jackson will have to suffer the consequences of what that creek's contamination will bring to the City Park and surrounding Main Street businesses."

"This blasting could change our water table and interfere with Hubble Creek which feeds in to our park system in Jackson, Missouri and support local wildlife as well."

"My son and I like taking walks down the road to Hubble creek and looking at the fish, how will that be affected?"

"The Heartland application detail map shows the location of the unnamed creek tributary that flows through the proposed quarry site, as well as a proposed outfall to that tributary, Outfall #001. However, none of the application materials indicate that Heartland has applied for or intends to apply for a dredge and fill permit from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act. A note on the detail map submitted with the application indicates that a "USACE 404 Permit Eligibility Determination currently in process." We believe that the unnamed creek tributary on the proposed site falls well within the jurisdiction of the U.S. Army Corps of Engineers. Even if the tributary is not a traditional navigable water, the U.S.

Army Corps of Engineers exercises jurisdiction over non-navigable tributaries of traditional navigable waters that are relatively permanent where tributaries flow at least seasonally. *See* U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, "Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States*," (December 2, 2008). Based on the jurisdiction of the U.S. Army Corps of Engineers over the navigable waters of the United States, any dredge or fill material discharged to that tributary requires a permit under Section 404 of the Federal Water Pollution Control Act, or the Clean Water Act, 33 U.S.c. §§ 1344 *et seq.* ”

“Further, if Heartland plans to discharge to the tributary, which is not addressed in the Heartland application, this constitutes a "discharge of *pollutants*" to the waters of the United States under the Clean Water Act, and Heartland must apply for and receive a National Pollutant Discharge Elimination System or "NPDES" permit. *See* 33 U.S.c. §§ 1342(a). The Clean Water Act prohibits discharge of a pollutant from a point source to a water of the United States without an NPDES permit. 33 U.S.c. § 1311 (a). A "point source" is "any discernible, confined and discrete conveyance, including, but not limited to any pipe ditch, channel, tunnel, conduit ... from which pollutants are or may be discharged." 33 U.S.c. § 1362(14). A "pollutant" is defined as "dredge spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.c. § 1362(6). There is no doubt that an outfall to a tributary that is a water of the United States is a point source under the Statute. Thus, if Heartland plans to discharge any material that could be a pollutant in to the tributary through its planned outfalls, it is required to receive an NPDES permit to do so.”

**Response:** Although permits from other agencies may be required at a mine site, the issuance of the Land Reclamation permit is not dependant on these other permits. The Land Reclamation Act does not require that an applicant secure all other necessary permits prior to the issuance of the Land Reclamation Permit. Many times the Land Reclamation Permit is acquired before other necessary permits.

Strip mining is a temporary harsh activity on the land affected by mining. We understand that strip mining does appear like environmental destruction. The strip mining process involves the clearing and grubbing of vegetation, removal of overlaying material to access the mineral commodity and blasting to fracture the rock mass. Due to the lack of environmental concern by some mine operators prior to 1970, there are now various safeguard requirements to protect the surrounding environment from a mining operation. Some of the safeguard requirements include keeping sediment from reaching a stream outside the mine area, keeping dust and other pollution from affecting areas outside the mined property and timely reclamation of land affected by mining. Laws enforced by the Missouri Department of Natural Resources require these environmental protection safeguards. The Land Reclamation Act requires that the affected land be reclaimed to a land use of wildlife, agriculture, development or a water impoundment. The mine-plan for this site involves land uses/acres of: 15-acres for wildlife, 88-acres development and 58-acres for a water impoundment. Wherever topsoil is replaced, vegetation will be established sufficient enough to control erosion. The Code of State Regulations at 10 CSR 40-



10.050(5)(B)8., specifically exempts an operator from reducing a highwall if there is an inadequate amount of material for backfill.

Restoring mined land to a viable land use is what The Land Reclamation Act is all about. The Act's declaration is to strike a balance between surface mining of minerals and reclamation of land subjected to surface disturbance by mining, as contemporaneous as possible, and for the conservation of land, and thereby to preserve, and aid in the protection of wildlife and aquatic resources, to establish recreational, home and industrial sites, and to protect and promote the health, safety and general welfare of the people of this state. The act and reclamation plan proposed by Heartland Materials, LLC, provides locomotion to return the mine site to a land use recognized by The Land Reclamation Act, if this permit is granted. A certificate to mine limestone issued by the Missouri Land Reclamation Commission does not allow an operator to destroy the environment.

### **Livestock Watering in Creeks**

**Concern:** “My brother rents part of my property for his cattle operation. A creek running through my land is the source of his cattle's water supply. I also have a spring on my property. I am concerned about how this quarry would affect the water in this creek. The creek also runs into Hubble Creek which runs through Jackson City Park.”

**Response:** According to the Missouri Department of Conservation, "Many livestock producers use ponds or streams as a watering source. These watering sources seem to offer an adequate supply of fresh water, when in reality it may be costing you more, through lost production due to poor water quality. Fencing your pond and stream and providing an alternative watering source may reduce the negative impacts of poor water quality on your cattle while improving the stream and pond resource....”

Cost-share programs with the Department of Conservation can reimburse you up to 75% of the cost. Solar watering works with any other land management programs you might be interested in. Contact the Fisheries Division of the Missouri Department of Conservation for more information on solar systems or your local NRCS, Soil & Water Conservation District or University Extension Office for information on other land management programs.

The Conservation Department has a detailed booklet, “Watering Livestock With Solar Water Pumping Systems”, with complete instructions and illustrations to build your own alternative watering system. To obtain a copy or learn more about other incentives available to you, contact your local fisheries biologist or private land conservationist.

(Source: <http://mdc.mo.gov/landwater-care/landowners-and-farmers/alternative-watering-sources>)

### **Request for Geologic Study**

**Concern:** “Also, we would like to request that the Department consider requiring Heartland Materials to obtain a geologic study in order to receive their permit. We serve over 2400 homes in the region and feel that by Heartland Materials providing the DNR with a geologic study, it

will help show the possible affect the quarry would have on the community's water needs in particular.”

**Response:** Concerns about water wells becoming contaminated or a drop in the static ground water levels due to a nearby mining operation are understandable. Currently, the The Land Reclamation Act does not require applicants to perform geologic studies of areas surrounding a proposed mine site. Therefore, the applicant would have to voluntarily commission such a study. The Land Reclamation Program has no authority to force the applicant to do so.

### **Property Devaluation**

**Summary of Concern:** In the letters, emails and petitions received, there were many concerns about how the location of the quarry would negatively impact property values in the area.

**Response:** The concern involving property devaluation is a real issue among residents who live near a mining operation. The mere presence of a mining operation may potentially decrease property values during mining and cause concerns among prospective homebuyers. It is not always true that mining causes property devaluation. There are some instances, where in fact, that the presence of quarry did not affect the value of a property.

Anyone has every right to seek restitution for damage that Heartland Materials, is responsible for. No one has the right to cause devaluation of someone else's property without proper reimbursement or settlement for those damages. This is based on laws governing property rights not laws that govern mining.

The Land Reclamation Act does not provide guidance for property devaluation that neighbors a mine site. Rather, the declaration of The Land Reclamation Act identifies the need to protect and perpetuate the taxable value of property while allowing for the responsible mining of mineral resources.

### **Impacts on Livelihood of Saxony Lutheran High School and Other Businesses**

**Summary of Concern:** In the letters, emails and petitions received, there were many concerns about how the placement of the quarry would negatively impact the future livelihood of Saxony Lutheran High School and businesses in the area.

**Response:** Although there may be an impact on students' desire to attend Saxony Lutheran, should this permit be approved, there is not sufficient evidence at this time that the school's enrollment will be unduly impaired by the issuance of the proposed new quarry permit. There may also be concern of prospective or future students and their parents committing to attending Saxony Lutheran High School knowing that a quarry may be located nearby their school. However, at this time there is not sufficient evidence to either support or refute the claim that attendance will decline.

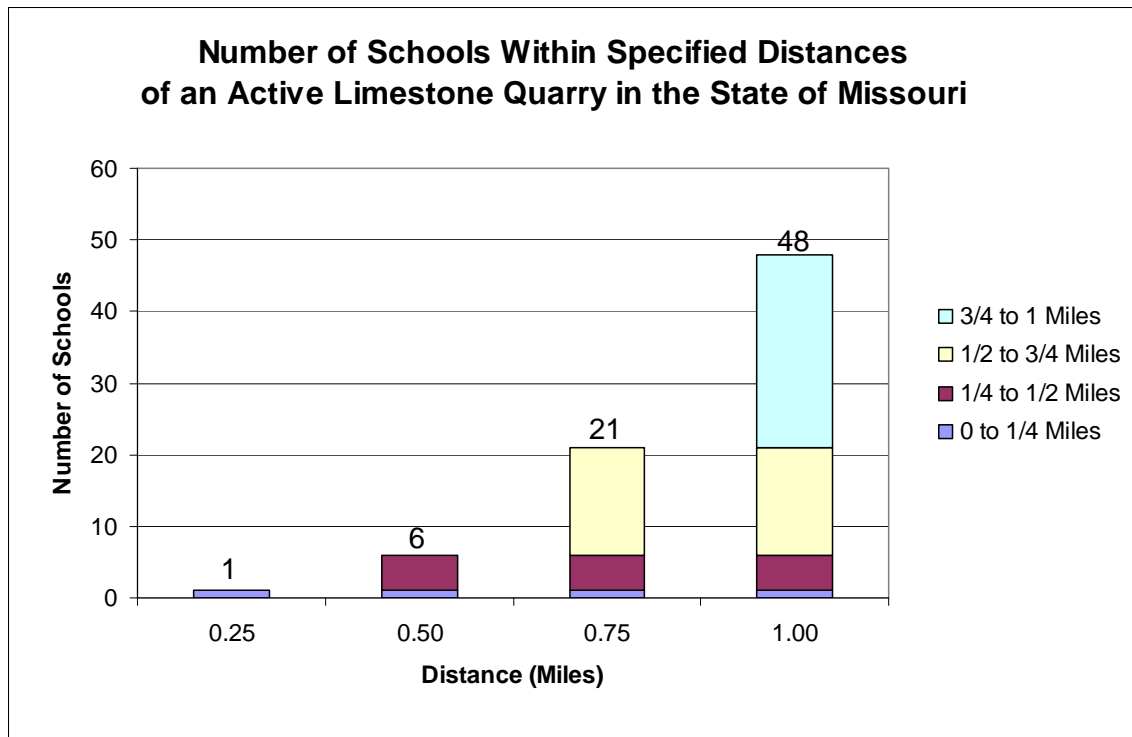
In consideration of and responding to this concern, the staff is simply not in any position to affirm or dismiss the possible impacts to the future well being and livelihood of Saxony Lutheran High School and its administrators or other employees at this time. Nor are we in any position to predict the impacts to other businesses in the area.

The staff has, however, performed some research in this area such as we were able to do so. We have reviewed the current locations of limestone quarries located near schools and we are providing the results of that cursory study for the commission's information below.

An analysis was performed using Geographic Information System (GIS) software to determine the number of schools within one mile of an active limestone quarry permitted by the Land Reclamation Program (LRP). The analysis included all private, public and higher education facilities located in the State of Missouri. Limestone quarries included in the analysis were only those that have currently active permits issued by the LRP.

There are 2,915 schools in the state, and of those, it was determined that there are a total of 48 schools located within one mile of an active limestone quarry. This is approximately 1.6% of all schools. Of those, one school is located within 0.25 miles, six are located within 0.50 miles, 21 are located within 0.75 miles and 48 are located within 1.0 miles (see Graph 1). Each of the 48 schools was contacted to ascertain if mining at the quarry was initiated before or after the school was established. It was determined that 36 schools were established before the quarry, 10 schools were established after the quarry and two were unknown.

During the contact made with each of the 48 schools, school administrators were questioned as to whether or not the school had experienced any issues related to mining at the quarry. There were seven schools that reported mine-related issues. Some of these include power surges or outages after blasting, vibrations due to blasting, minor dust issues and increased truck traffic. It was noted that the majority of blasting related issues were experienced after school hours.



Graph 1. Number of Schools within Specified Distances of an  
Active Limestone Quarry in the State of Missouri

## **Deny the Permit**

**Concerns:** “Please deny these applications and permit our children and those with health problems to live in the healthy environment that God gave us.”

“Consequently, I respectfully urge your group to give serious consideration to NOT approving either of these quarries at this site because of the health concerns, not only for me, but for the other people at Saxony Lutheran High School.”

“We are asking you to deny blasting rights to any quarry wanting to destroy our neighborhood.”

“In addition, we request that you, as the Director of the Land Reclamation Program, make a formal recommendation to the Land Reclamation Commission that it deny the Heartland Materials Permit for Industrial Mineral Mines -New Open Pit Permit-Heartland Quarry, SUR-799 & 2102, T-32N, R13E, Cape Girardeau County, Missouri.”

“To this end, we stand in unwavering support of Saxony Lutheran High School and their opposition to the proposed quarry operations which threaten to surround the school.”

**Response:** Respectfully, there are comments in the submitted letters requesting that the permit application be denied or not approved. The department’s Land Reclamation Program cannot simply deny this permit application based on a citizen request. The permit application is in compliance with the provisions of The Land Reclamation Act, and an application that meets the standards and requirements of the “Act” must be recommended for approval.

## **Affects on Quality of Life**

**Comment:** "I am very concerned how the quarry would negatively affect me, my quality of life, and my property."

"The constant background noise of generator and rock crusher operation, particularly during, but not limited to (given shift work of many local residents), the evenings and on weekends would also be a detriment to health and quality of life of my family and nearby residents."

"I have grave concerns about how the extra irritants in the air will affect the health and daily quality of life of myself and everyone in the area, the students of North Elementary School and especially the students at Saxony Lutheran High School who will be in very close proximity to the quarry site."

"Several residents on our road work swing shifts, or as in the case of my husband the overnight shift. These people sleep during the day. How will the noise from blasting, drilling, rock crushers, generators, heavy trucks and excess traffic affect the quality of sleep these people need to perform their jobs adequately and safely."

"This could seriously affect their future health and daily quality of life."

"This is quality of life changing and not appreciated. You would not seriously consider having a quarry come to your own neighborhood."

"A quarry in this area, especially in this location, would cause several unwanted changes to the quality of life for myself, my family, and the many people who live, work, and go to school in this area."

"With a quarry located this close to my home, I am very concerned that this quarry will affect the quality of life I have come to love in the Fruitland area."

"I fear that I, and many people in the Fruitland area, will have a change for the worse in the quality of life that we live in this area."

**Response:** Public interest quite often relates to specific issues of air pollution, water pollution, discomfort to the quality of life, blasting, noise or travel way safety issues. Unfortunately, out of this list only dust and water pollution is enforceable by environmental regulations. The others are all issues important to society and they are all legitimate issues however, they are not environmental issues that are within the regulatory authority of the Missouri Land Reclamation Commission.

Current law requires a petitioner to provide to the Land Reclamation Commission good faith evidence of how their health, safety or livelihood will be unduly impaired by the issuance of the permit before a hearing may be granted. We recommend that petitioners be prepared to explain to the commission why they feel that health, safety or livelihood will be unduly impaired by the issuance of this permit. The Missouri Land Reclamation Commission, not the program staff, will make a determination as to whether someone's health, safety or livelihood would be unduly impaired by the issuance of the permit certificate.

### **Request for a Public Meeting**

**Summary of Concern:** In the approximately 2,600 letters, emails and petitions received, there were many requests for a public meeting.

**Response:** On Tuesday, November 30, 2010, a letter was received from Heartland Materials, L.L.C. respectfully declined to hold a public meeting.

### **Hearing Request**

**Summary of Concern:** The following individuals wrote to the staff director and/or the commission to request that a hearing be granted prior to a decision being made on the issuance of this permit: Stacia & Michael Shipman, Martha Thompson, Douglas Breite, Christine Breite, Kelly Johnson, Geroid Lix, Vicki Howell, Joyce Clark, Samuel Breite, Erna Mahnken, Danielle Huber, Bill Webber, Sandra Stuart, Verna Kieninger, Randy & Lisa Begley, Dan & Carol Hemmann, Raleigh & Janet Johnson, Mr. August Birk, Jennifer Johnson, Amelia Mansfield, Roger & Bonnie Seabaugh, Laura Klinkhardt, Reid & Priscilla Mabuce, Michael & Mary Hecht, Leon Laurentius, Helen Laurentius, Gary Klinkhardt, Jayne Tiehes, Darryl Strohmeyer, Thomas

R. Brunke, Dan Seib, Martin Robinson, LaDonna Oliver, Albert Oliver, Rick Tiehes, Dana Steffens, Kerry Steffens, Jerry Emerson, Doris Emmerson, Kim Mueller, Daniel Makins, Charlotte Hadler, Mr. & Mrs. Elbert Roth, Roy Aberadaufer (sp?), Elisabeth Gibbons, Carolyn Cannon, Donald Cannon, Willard & Glenda Hadler, Laurie Heise, David Heise, Charles Wayne Heise, Jeanne Heise, Kathy Heise, Linda Dreyer, Brad Mueller, Don Mueller, Karla Versemann, Renee Kaempfe, Wm. Paul Kaempfe, Brent Versemann, Elaine Kaempfe, Lisa Kaempfe, Kara Versemann, Mark Kaempfe, Rodney & Casey Brown, Dale Steffens, Robert P. Wilson, Ruby Eichhorn, Margaret Mankins, Shannon Mueller, Cletus & Ruby Steffens, Arlan Steffens, Mark & Jennifer Roth, Stacey Versemann, Pat Cox, Andy & Jenn Spieler, Timothy Dreyer, Rev. Roger Abernathy, Verna Koenig, Norma Koenig, Roger Versemann, Euline Koenig, Ruth Hecht, Honorable Rep. Scott A. Lipke, Clay & Sandy Roth, Paul Koenig, Geroid Lix, Thomas Kiefner, Dean & Joyce Lorenz, William & Lydia Bohnert, Pat Tanz, Eric & Theresa Borgfield, Oleen Saffell, Bill Holt, Nancy Reppen, Alan & Linda Verseman, Norvald Reppen, Mike Roth, Steven Michael Blackwell, Wayne & Mary Koenig, Lauren Roth, Karen Schmidt, Daniel & Darlene Kiefer, Linda Holt, Brian & Michelle Mueller, Gerry Koenig, Richard Schmidt, Mildred Bachmann, Paul & Diane Wunningham, Gordon Walton, Jennifer Koenig, Frank Bowles, Tammy Lueders, Bill & Gloria Davis, Kenneth & Wanda Steffens, Leonard & Joy Hoffemeister, Ramona Nenninger, Jessica Reisinbechler, Eunise Roth, Kenyon & Mary Reisinbechler, Alice A. Birk, Don & Carolyn Hopper, William L. Linamen, Marvin and Aileen Petzoldt, Norma J. Boettcher, Rick & Judy Weiser, Henry & Katrina Voelker, Pat Petzoldt, Karla Avers, John Muench, Rhonda Starzinger, Marie M. Lange, Don & Sue Hellwege, Elsie & Raymond Siebert, Pamela S. Dooley, Gayla J. Ressel, Tamera J. Petzoldt, Mary Renne, Barbara Theiss, Jim Whaley, Pamela L. Kluesner, Rita Whaley, Todd L. Petzoldt, Glen Birk, Betty M. Roth, Ilmer Burroughs, William L. Linamen, Marvin and Aileen Petzoldt, Norma J. Boettcher, Rick & Judy Weiser, Henry & Katrina Voelker, Pat Petzoldt, Karla Avers, John Muench, Rhonda Starzinger, Marie M. Lange, Don & Sue Hellwege, Elsie & Raymond Siebert, Pamela S. Dooley, Gayla J. Ressel, Tamera J. Petzoldt, Mary Renne, Barbara Theiss, Jim Whaley, Pamela L. Kluesner, Rita Whaley, Todd L. Petzoldt, Glen Birk, Betty M. Roth, Ilmer Burroughs, John Reese, Melody Hamm, Christopher Roth, Jennifer Mosier, Jason Hamm, John Mosier, Sandra S. Fluegge, Ken & Joyce Moore, Raymond and Lorna Roth, Maurice H. Lange, Leonard Jansen, Wendell & Kim Mueller, Katie Duvall, Rita Kester, Eric Ressel, Brad & Paula Beal, Dale F. Kester, Rev. Loren A. Bottcher, Jerry G. Lewis, Beverly Lewis, Martin B. Roth, Wayne & Marilyn Steffens, Bill Shrum, Martha Meunch, Dale & Betty Brown, Carolyn K. Hopper, Gary W. Kester, Vernon & Betty J. Steffens, Earl & Delores Hacker, Dennis & Diane Leimbach, Lillian Weber, Ruth Kasten, Dorothy Bertrand, Gloria Kaiser, Mabel Shrum, Dorothy Seabaugh, Harry Bertrand, Nancy A. Kester, S. Lueders, Larry R. Fluegge, Stan Petzoldt, Geraldine Steffens, Nelson Roth, Karla Kiefner, Lori Steffens, Darlene Loos-Cowan, Gladys E. Nebel, Charles Vaughn, Frank & Lori Zieba, Marjorie Suedekum, Daniel Steffens, Max Wieser, Anna Hickam, Joe & Ramona Nenninger, Alberta Heinbaugh, Brad & Rita Weber, Peggy Scholl, Shelly Hale, Suzanne Vaughn, Marilyn Lowes, Mike Reed, Sarah DeGroot, Travis Perr, John & Jane Kenner, David P. Hunt, Meta Petzoldt, Kristin Perr, Harlan Perr, Kimberly Perr, Lavanda Perr, Kristine Coe, Dan & Kathy Schoenherr, Rich & Kathy Steffens, Bonnie Hemmen, Melvin & Doris Schmidt, Al Franke, Richard Walther, Harold K. & Rebecca Witherby, Carolyn Walther, Judy Franke, Charlene Willenbring, Carolyn Wills, Saxony Lutheran High School, Judy Diebold, Jean Ann Pierce, PWSD #1 Cape & Perry County, Ashley Zeigler, Gary & Geneva Brandes, Annette A. Roth, Franklin Roth, Linda Phillips, Mr. Jim Outman, Bradley & Patricia Schwab, Joe & Jane

Kurre, Aimee Stowers, Staci & Mathew Wendel, Gary & Diane Laurentius, Tyson & Carrie Wunderlich, Julie Hughes, Charles T. Hampton, Lynne S. Hampton, Lisa M. Hudson, Rev. Ray Mirly, Dennis Gehrke, Lynn & Carol Winter, Robert & Amy Birk, Michael & Kimberley Pohlman, Adam, Gary & Carol Steffens, Don & Stephanie Ford, Carl & Mary Talley Trust, Ruth Ann Boxdorfer, Anna Culbertson, Donald & Linda Palisch, Dalene Grebing, Scott Engert, Margie Engert, Bruce & Linda Engert, Betty Schuells, Dorothy Pinkston, Janie Pfanstiel, Dale Clarke, Lynne Cairns, Brooke Breuer, Carolyn Fieldler, Debbie Howie, Jo Ann Bock, Richard Cairns, Grace Albrecht, Tony & Kathy Harris, Dorthylyn Evans, Bob Wagner, Louis Theiss, Robert A. Stell, Kristina Stell, Linda Bauwens, Sherri Rollet, James R. Schuessler, Terry Hadler, Helen Henderson, Justine M. Heberlie, Mike Heberlie, Velma Davis, Keith Smith, Carol Grantham, Dempsay Grantham, Brian Koenig, Grace E. Zahner, Earl B. Fritsche, Susan Fuytinek, Dale D. Koenig, Sandra Koenig, Dana Seibel, Brent Buerck, Matthew Lohmann, David A. Call, Mary M. Zoellner, Randy J. Leible, Paul J. Stueve, Mary Lohmann, Doris O. Petzoldt, Denise J. Steffens, Dean Kimmick, Sharon Bergman, William G. Jones, Paul W. Kasten, Paul W. Kasten, Cheryl Stueve, Matthew Mueller, Mildred Cearlock, Albert Cearlock, Randolph M. Mueller, Robert W. Hacker, Elmer H. Petzoldt, Patricia L. Callier, Kerby Hansen, Carolyn Schade, Barbara Rubach, Nora Kiefer, Stanley M. Roth, Roger Mueller, Michelle L. Hansen, Christie Steffens, Cindy Mueller, Selma Thole, Orville Schaefer, Eugene C. Dreyer, E. Carol Dreyer, Mildred McMath, Stephanie L. Roegner, Betsy Boettcher, Arleen Hansen, Stephanie Brown, Sherri Palmer, Nancy L. Wills, Betty Roth, Edgar Roth, Lorna Bergdolt, Arlene Lohmann, Rich Dreyer, Shannnon Mueller, Brad Mueller, Sharon J. Dees, Mark Weinkein, James A. Brown, Craig M. Brown, Allyn G. Steffens, Alice L. Hacker, Herman C. Wills, Lisa Pfeiffer, Douglas Pfeiffer, Melissa Fortner, Dianna Koenig, Phillip L. Norman, Arthur Tayon, David Mitchell, Irma L. Hoffstetter, La Donna Weber, Angie Hurt, Vera Sandler, Carole Brown, Carole Brown, Joyce Bova, Palmer E. Fritsche, Susanne Adelman, Susan Dickmann, Lois A. Fritsche, Richard Thoke, Phillip W. Mayhall, Joyce Balsmann, Betty J. Brune, Arleen Pfeiffer, Billie Jean Vogel, Craig Cambron, Connie Cambron, Kelly D. Carstens, Michelle Dreyer, Kurt D. Schoenherr, Regina L. Nuyt, W. D. Dougherty, Nancy Dougherty, Marilyn Mitchell, Darren H. Verseman, Stuart Prevallet, Shelley Prevallet, Chrissy Buerck, Pearl Petzoldt, Debbie Chappins, Laura Neislen, Amy Lohmann, Dorothy M. Wills, Janette L. Call, Ann Welken, Charlotte Krauss, Angie Schuessler, Gregory L. Yamnitz, Ron Wills, Richard P. Weber, Margaret Weber, Howard M. Krauss, Loretta M. Givens, Marylee Hoehn, Brandon Buerck, LeRoy E. Dreyer, Jill A. Wills, Amy M. Yamnitz, Jeff Bohnert, Alfred L. Dreyer, David Werner, Vernon Wills, Sally R. Werner, Kevin R. Gruenwald, Meredith Gruenwald, Wayne P. Kasten, Sherry S. Kasten, Della M. Dreyer, Betty Deardorff, Tillmon F. Petzoldt, Don E. Carter, Kenneth L. Weber, Jerry J. Brandt, Wanda Brandt, Michael Cornehlson, Matt Cates, Diane Cates, Ashley Otte, Brandy Neal, Bonnie L. Hudson, Dolores Petzoldt, Anna G. Hudson, Earline Leible, Sandra Schumer, Gilbert R. Cornehlson, Rhoda Cornehlson, Orreal Katt, Louaira Bock, Brenda L. Wichern, Debra S. Naeger, Dorothy L. Flentge, Connie L. Schuessler, Lyle Petzoldt, Lisa A. Buerck, Randy Behle, Betty Bohnert, Alan Schlichting, Lillian Bohnert, Harold Bohnert, Ruth V. Jordan, Janet Conrad, Lynn Hellman, Ruby F. Mueller, Marvin Mueller, Bonnie Smith, Rev. Matthew T. Marks, Tracey Schlichting, Sarah Borden, Steven L. Eggemeyer, Donna S. Brewer, James Enke, Rhonda K. Enke, Mary Rohde, Cletus Rohde, Gail Mueller, Kerry Mueller, Charles W. Schmidt, Donna C. Guemmer, Roger L. Conrad, Reinhold Mueller, Stanley Galeski, Susan Galeski, Merlin O. Kasten, Ruby Kasten, Patricia O. Heuring, Ronald A. Heuring, Toby Taylor, Melanie Taylor, Delfie Mueller, Angela R. Brewer, Tim M. Brewer, Anna Lexon,

Jessica A. Feldmann, Daniel P. Weber, Faye Weber, Rosemary Dreyer, Doris M. Verseman, Nicole Koenig, Joseph L. Koenig, Raymond O. Bohnert, Wayne Taylor, Carol A. Taylor, Thomas J. Buerck, Eunice Buerck, Nancy J. House, Bernard E. Sohlichting, Steve Hudson, Mike Kueker, Sherry Kueker, Stan Cook, Greg Griffith, Julie French, Donna Phillips, Elbert A. Hadler, Nancy Reisenbichler, Connie Courtois, Benjamin Courtois, Ronald J. Courtois, Janet R. Hadler, Martha J. Haertling, Janice Geile, Viola Schilli, Michelle Petzoldt, Gilbert Bock, Jr., Cindy Cissell, Donna Bock, Daniel Geile, Albert Schubert, Kristen Gruenwald, Linda Ruessler, Beverly Buerck, Judith K. Bohnert, Charles Berry, Colleen F. Burroughs, Kenneth Burroughs, Rachel Deckerd, Larry Dreyer, Patricia S. Wichern, Robert L. Wichern, Karen Schweiss, Brad Schweiss, Julia L. Abernathy, Shirley M. Webb, Rose Weber, Sharon Rodewald, Barbara A. Wibbenmeyer, Sharon Ehlers, Beth A. Anderson, Tammy S. Sparkman, Earl Koenig, Norma Koenig, Arleen Schlichting, Paul J. Hudson, Dan & Rahe Wise, Tommy Petzoldt, Doug Hemman, Donna J. Pry, Patsy Chandler, Abby Petzoldt, Rev Ray Mirly, Dennis Gehrke, Peggy Lorenz, Kermit Meystedt, Paige & Matt Kiefner, Bill & Betty Heisserer, Lauri Spain, Bruce & Kim King, Brinda & Omer Luttrull, Matt Wendel, Ray & Julie Meyer, David Shorr, John Beaudean, Michael & Nancy Berry, Jessica Wyatt, Leslie Lochmann, Dennis Stowers, Leslie & Kimberly Fritsche, Richard & Carol Dippold, Linda Murphy, Jerry Kasten, Marlene Roth, Lee Haupt, Jennifer Koenig, Diann Mueller, Connie Burroughs, Mildred Bachmann, Kevin Coe, Lillian Vogel, Ray & Julie Meyer, Kenyon & Mary Reisinbechler, Kathy Schlichting, Mahela Lueders, Janine Pfanstiel, Lynne Cairns, Richard Cairns, Grace M. Albrecht, Kathy Harris, Clay Roth, Dan Roth, Sandy Roth, Brad H. Weber, Rita A. Weber, Linda Palisch, Dorene Grebing, Bruce & Kim King, Scott Engert, Margie Engert, Linda & Bruce Engert, Patricia L. Callier, Lovaira Bock, Paul Horn, Michael, Patricia, Kim Carla Stadt, Frances J. Reid, Carinsa D. Perez, Evelyn Nussbaum, Ron Wahlers, Harold & Jeanine Hager, Virginia Wahlers, Keith & Beth Keller, Tim & Karen Sutterer and Larry Hale

**Response:** We are placing the request for a hearing on the Missouri Land Reclamation Commission's January 27th, 2011 agenda. The decision as to whether or not a formal hearing will be granted rests solely with the Missouri Land Reclamation Commission. In order for the commission to grant a formal hearing, the petitioners must first establish standing. The petitioners are said to have standing if the petitioners provide good faith evidence of how their health, safety or livelihood will be unduly impaired by the issuance of the permit. The impact to the petitioner's health, safety and livelihood must be within the authority of any environmental law or regulation administered by the Missouri Department of Natural Resources.

The request for hearing will be presented to the Land Reclamation Commission on January 27, 2011 at 10:00 AM. The location will be at the Missouri Department of Natural Resources, Elm Street Office Complex, Bennet Springs and Roaring River Conference rooms, 1730 East Elm, Lower Level, Jefferson City, Missouri. If the Commission grants the requests for a hearing, the actual hearing will be scheduled at a later date. It should be understood that if a hearing is granted, the burden of proof shall be on the applicant for the permit. If the Commission finds, based on competent and substantial scientific evidence on the record of the hearing, that an interested party's health, safety or livelihood will be unduly impaired by the issuance of that permit, the Commission may deny such permit.